

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
METEOR AG, and its interested Subrogated
Underwriters,

Plaintiff,

-against-

Case. No. 08 CV 3773
JUDGE KOELTL

FEDERAL EXPRESS CORPORATION,
FEDEX, FEDEX CORPORATION,
TNT FREIGHT MANAGEMENT (USA) INC.,
GEODIS WILSON USA, INC., and
LAND AIR EXPRESS,

Defendants.
-----X

**DEFENDANT'S ANSWER TO CROSS CLAIM OF TNT FREIGHT MANAGEMENT
(USA) INC. and GEODIS WILSON USA, INC.**

Defendant Federal Express Corporation, incorrectly sued as FedEx Corporation, by its attorneys, submits the following Answer to the Cross Claim of Defendants TNT Freight Management (USA) Inc. and Geodis Wilson USA, Inc. (collectively "Cross Defendants"):

1. FedEx denies the allegations contained in paragraph 1.
2. FedEx denies the allegations contained in paragraph 2.
3. FedEx denies the allegations contained in paragraph 3.
4. FedEx denies the allegations contained in paragraph 4.

The remainder of the Cross Claim contains a prayer for relief to which no response is required. To the extent a response is required, FedEx denies that Cross Defendants are entitled to any of the relief sought.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

Cross Defendants' Complaint fails to state a claim upon which relief can be granted in that it seeks damages in excess of FedEx's contractual limitation of liability.

SECOND AFFIRMATIVE DEFENSE

Cross Defendants' claims, if any, are barred or limited by the terms and conditions contained in the contract of carriage as evidenced by the language found on the airbill which accompanied the shipment at issue and by the terms and conditions of the applicable FedEx Service Guide incorporated therein by reference.

THIRD AFFIRMATIVE DEFENSE

Cross Defendants' state law tort claims are preempted by the federal common law applicable to federally certificated air carriers and by 49 U.S.C. §41713.

FOURTH AFFIRMATIVE DEFENSE

Cross Defendants' claims are barred or limited by their own breach of contract, or the breach of contract of their agents, employees or representatives.

FIFTH AFFIRMATIVE DEFENSE

Cross Defendants' claims are barred or limited by their own assumption of risk, or the assumption of risk by their agents, employees, or representatives.

SIXTH AFFIRMATIVE DEFENSE

FedEx alleges that there may be other persons or entities who may or may not have been named and/or served in this action who are at fault with respect to the matters referred to in the Complaint, and that such fault proximately caused the damages, if any, complained of by Cross Defendants.

SEVENTH AFFIRMATIVE DEFENSE

Cross Defendants' claims are or may be barred by its failure to give timely notice.

EIGHTH AFFIRMATIVE DEFENSE

Cross Defendants' claims are or may be barred by the Cross Defendants' failure to comply with the terms of the contract of carriage and the Montreal Convention of 1999.

NINTH AFFIRMATIVE DEFENSE

Cross Defendants' claims are preempted by federal law, including, inter alia, the Airline Deregulation Act, 49 U.S.C. § 41713.

TENTH AFFIRMATIVE DEFENSE

Cross Defendants' claims are or may be barred or limited by the Convention for the Unification of Certain Rules Relating to International Transportation by Air concluded at Warsaw, Poland on October 12, 1929 ("Warsaw Convention"), and any amendments thereto, including but not limited to, the Hague Protocol of 1955, the Montreal Protocol No. 4, and the Montreal Convention of 1999.

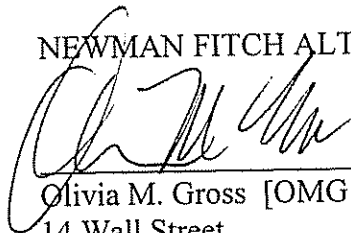
ELEVENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are or may be barred by the Plaintiff's failure to comply with the terms of the contract of carriage and/or the Warsaw Convention.

Dated: New York, New York
July 3, 2008

Respectfully submitted,

NEWMAN FITCH ALTHEIM MYERS, P.C.



Olivia M. Gross [OMG 6008]
14 Wall Street
22nd Floor
New York, New York 10005
Telephone: (212) 619-4350

Attorneys for Defendant
FEDERAL EXPRESS CORPORATION

OF COUNSEL

Thomas W. Murrey, Jr.
Tennessee Bar #011623
Federal Express Corporation
Legal Department
3620 Hacks Cross Road
Building B, Third Floor
Memphis, Tennessee 38125

TO:

Lawrence C. Glynn, Esquire
Nicoletti Hornig & Sweeney
Attorneys for Plaintiff
Wall Street Plaza
88 Pine Street
New York, NY 10005-1801

Mare Kunkin, Esquire
Attorneys for Defendants
TNT Freight Managements (USA) Inc.
Geodis Wilson USA, Inc.
14 Penn Plaza – Suite 500
New York, NY 10122

James A. Saville, Jr., Esquire
Hill Rivkins & Hayden, LLP
Attorneys for Defendants
Land Air Express, Inc.
45 Broadway, Suite 1500
New York, NY 10006

AFFIDAVIT OF SERVICE

STATE OF NEW YORK)
 :ss:
COUNTY OF NEW YORK)

BETH JAFFE, being duly sworn, deposes and says:

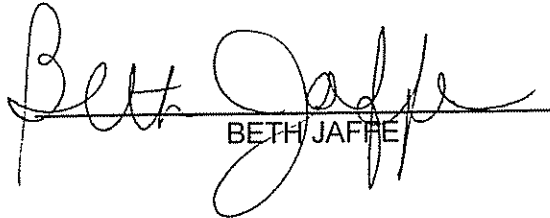
I am not a party to this action, I am over 18 years of age and I reside at Queens, New York.

On July 3, 2008, I served the within DEFENDANT'S ANSWER TO CROSS CLAIM OF TNT FREIGHT MANAGEMENT (USA) INC. and GEODIS WILSON USA, INC., upon the attorneys listed below at the address designated by said attorneys and for that purpose by depositing a true copy of same enclosed in a postpaid, properly addressed wrapper, in an official depository under the exclusive care and custody of the United States Postal Service within the State of New York.

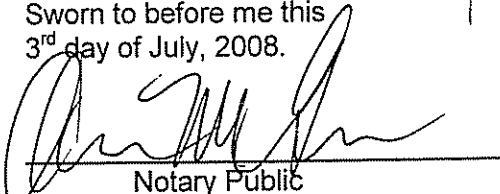
TO:
Lawrence C. Glynn, Esquire
Nicoletti Hornig & Sweeney
Attorneys for Plaintiff
Wall Street Plaza
88 Pine Street
New York, NY 10005-1801

Mare Kunkin, Esquire
Attorneys for Defendants
TNT Freight Managements (USA) Inc.
Geodis Wilson USA, Inc.
14 Penn Plaza – Suite 500
New York, NY 10122

James A. Saville, Jr., Esquire
Hill Rivkins & Hayden, LLP
Attorneys for Defendants
Land Air Express, Inc.
45 Broadway, Suite 1500
New York, NY 10006


BETH JAFFE

Sworn to before me this
3rd day of July, 2008.


Notary Public

Olivia M. Gross
Notary Public, State of New York
No. 02GR4860934
Qualified in Nassau County
Commission Expires May 5, 2010